STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

RI STATE LABOR RELATIONS BOARD

-AND-

CASE NO: EE- 3723

STATE OF RI – HIGHER EDUCATION ASSISTANCE AUTHORITY

DECISION AND ORDER OF DISMISSAL

TRAVEL OF THE CASE

The above entitled matter came on to be heard on a Petition for Investigation of Controversies as to Representation" (hereinafter "Petition") filed by RI Council 94, AFSCME, AFL-CIO (hereinafter "Union") on September 6, 2011 wherein the Petitioner sought to represent the following positions: Assistant Administrative Officer, Chief of Program Development, Department Manager, Director of Program Administration, Programmer Analyst I, Programmer Analyst II, Supervising Accountant and Technical Support Specialist III.

The Board's Administrator conducted an informal hearing, on the Petition, on October 5, 2011, which was attended by Representatives from both parties. The Employer objected to the inclusions of these positions in the bargaining unit on the grounds that these employees were either supervisory, managerial, or confidential employees; and therefore, ineligible for collective bargaining. At that time, the parties indicated that no agreement could be reached to create a bargaining unit. Formal evidentiary hearings on the Petition were held on March 27, 2012 and May 22, 2012. Both the Employer and the Union were represented and afforded a full and fair opportunity to examine and cross-examine witnesses; as well as given the opportunity to submit documentary evidence in support of their respective positions. Upon conclusion of the hearings, the parties submitted Briefs.

DISCUSSION

On August 28, 2012, after discussion, a Motion was made by Frank Montanaro and seconded by John Capobianco to proceed to Election. Walter Lanni voted in favor of the Motion. Ellen Jordan, Elizabeth Dolan, and Gerald Goldstein opposed the Motion. Motion failed. Subsequently, a Motion was made by Ellen Jordan and seconded by Elizabeth Dolan to dismiss the matter. Gerald Goldstein voted in favor of the Motion. Frank Montanaro, John Capobianco, and Walter Lanni opposed the Motion. Motions failed based on procedural grounds.

In this case, the Board finds itself once again in the position of having a deadlocked Board for the purposes of voting, due to a vacancy on the Board. The vote of the Board is deadlocked on the substantive issue of the eligibility of the petitioned-for positions for collective bargaining. Unfortunately, the Board has no mechanism to deal

¹ While this result was once rare, deadlocked votes have become fairly common since the vacancy of the seventh position, due to death of a member, in January 2009. The Board Member's position was never filled and remains vacant.

with deadlocked opposing motions. The Board's enabling Act does not provide for alternate Members who can be utilized for breaking tie votes. Thus, without a majority to support either a Motion to proceed to election or to dismiss the Complaint on substantive grounds, the Board has no choice but to dismiss the within matter on procedural grounds. Accordingly, the Complaint is being dismissed solely due to the inability of Motions to sustain sufficient votes for passage.

FINDINGS OF FACT

- 1) The Rhode Island Higher Education Assistance Authority is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) The Union is a labor organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection and, as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
- 3) On September 6, 2011 the Petitioner filed the instant action seeking to represent the following positions: Assistant Administrative Officer, Chief of Program Development, Department Manager, Director of Program Administration, Programmer Analyst I, Programmer Analyst II, Supervising Accountant and Technical Support Specialist III.
- 4) The Employer objected to the inclusions of these positions in the bargaining unit on the grounds that these employees were either supervisory, managerial, or confidential employees; and therefore, ineligible for collective bargaining.
- 5) On August 28, 2012, the Board considered the matter and was unable to arrive at anything other than a deadlocked vote.

CONCLUSIONS OF LAW

1) Since neither a Motion to either include or exclude the positions of Assistant Administrative Officer, Chief of Program Development, Department Manager, Director of Program Administration, Programmer Analyst I, Programmer Analyst II, Supervising Accountant and Technical Support Specialist III, within the proposed bargaining unit has carried, the within matter must be dismissed solely on procedural grounds.

ORDER

1) The Petition in this matter is hereby dismissed, without prejudice, to the possible reconsideration upon the appointment of a seventh Board Member.

RHODE ISLAND STATE LABOR RELATIONS BOARD

WALTER J. LANNI, CHAIRMAN

HOSSIER J. LANNI, CHAIRMAN

FRANK J. MONTANARO, MEMBER

MENEL S. SSESSEM

GERALD GOLDSTEIN, MEMBER

JOHN CAPOBIANCO, MEMBER

ELIZABETH S. DOLAN, MEMBER

ELIZABETH S. DOLAN, MEMBER

ENTERED AS AN ORDER OF THE RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated

2012

Rv.

ROBYN H. GOLDEN, ADMINISTRATOR

EE-3723

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NOTICE OF RIGHT TO APPEAL AGENCY DECISION PURSUANT TO R.I.G.L. 42-35-12

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. EE-3723 dated December 21, 2012 may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **December 21, 2012**.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: December 21, 2012

Robyn H. Golden, Administrator

EE- 3723